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Office of Healthcare Inspections

VETERANS HEALTH ADMINISTRATION

Review of Veterans Health Administration Reproductive Health Services

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Executive Summary

The VA Office of Inspector General (OIG) conducted a national review of Veterans Health Administration's (VHA) reproductive health services for veterans. While VHA provides reproductive health services for men, women, and [gender non-conforming](#) veterans, women continue to be the fastest growing veteran population.¹ Approximately 600,000 women veterans use VHA for health care, half of whom are of childbearing age.² The purpose of the review was to capture a snapshot of the availability of reproductive health across VHA given (1) the rapid demographic change highlighting the need for VHA to ensure ample capacity of reproductive health services, (2) recent court decisions and subsequent changes in state legislation that may affect access to reproductive health services through community care, and (3) the expansion of reproductive health services covered in VA's medical benefits package.

Reproductive health services are offered through VHA facilities and VHA-paid community care providers and cover a range of healthcare needs across a person's lifespan. Reproductive health care includes [contraception](#), [preconception care](#), [sexual dysfunction](#) treatment, [infertility](#) evaluation and treatment, [maternity care](#), [pelvic and urinary health care](#), management of [menopause](#), and recently added [pregnancy options counseling](#) and [abortion](#) services.³

Review Results

To understand the availability of reproductive health services across VHA, the OIG selected 26 VHA facilities, which included all Veterans Integrated Service Networks (VISNs), a range of facility complexities, a mix of rural and urban geographical service areas, and varying levels of state restrictions to abortion services. In March 2023, approximately six months after VA's enactment of an interim final rule (IFR), which authorized VA to provide abortion counseling and in certain cases, abortion services, the OIG interviewed leaders at the selected VHA facilities.⁴ The OIG's interviews were used to identify concerns and offer candid perspectives

¹ The underlined terms are hyperlinks to a glossary. To return from the glossary, press and hold the "alt" and "left arrow" keys together.

² VHA Women's Health Services, Women's Health Evaluation Initiative, Sourcebook: Women Veterans in the Veterans Health Administration, Volume 4: Longitudinal Trends in Sociodemographics, Utilization, Health Profile, and Geographic Distribution, February 2018. A VHA analysis of veteran population trends from 2018 found that the number of women veterans under age 35 had tripled over the course of sixteen years.

³ VHA, *Fact Sheet: Veteran Community Care General Information*, September 9, 2019, accessed August 22, 2023, https://www.va.gov/COMMUNITYCARE/docs/pubfiles/factsheets/VHA-FS_MISSION-Act.pdf#. VHA-paid community care is care rendered from a non-VHA provider (community care provider) when a facility is unable to provide the necessary care and services, when a patient cannot safely travel due to medical reasons, when care cannot be provided timely, or when care cannot be provided due to geographic inaccessibility.

⁴ IFR-Reproductive Health Services, 87 F.R. 55287, 38 C.F.R. § 17, Sept. 9, 2022. The OIG did not independently verify the information reported by interviewees for accuracy or completeness.

from the facilities. The OIG did not analyze quantitative data on patients, facilities, or procedures performed within VHA, and the sampling method was not random, thus findings cannot be statistically generalized across VHA.

The OIG found that the selected facilities were generally able to provide reproductive health services. For the most part, the challenges reported were not unique to the provision of reproductive health and were consistent with recognized broader challenges for health care, including rural areas and travel distances to obtain specialty care; limited resources available in the community, including provider shortages; and challenges with VHA staffing and recruitment.⁵

Challenges were rarely reported for established reproductive health services, though some facility leaders mentioned limited eligibility criteria and complex community care referral processes for [in vitro fertilization](#) (IVF).⁶ A few noted a disruption in the availability of specific formulations of an erectile dysfunction medication.

Challenges were more frequently reported regarding implementation of pregnancy options counseling and abortion services under the IFR. Most facility leaders interviewed by the OIG reported plans in place for provision of pregnancy options counseling and abortion services through a combination of in-house resources, inter-facility coordination with other VHA sites, and community care resources. However, facility leaders reported that patients presenting for covered abortion services were few, and many facilities had not yet encountered the need to provide these services, making it too soon to determine the efficacy of the plans in place. A few facility leaders, predominantly from facilities in states with legal restrictions affecting access to abortion services, acknowledged continuing uncertainties regarding their resources and plans for providing pregnancy options counseling and abortion services.

As abortion-related legislation and court rulings continue to evolve, facilities may need to adjust processes in states with laws limiting abortion services. Several facility leaders expressed concerns regarding potential legal repercussions, including adverse licensure actions, which could negatively impact implementation of the IFR at facilities in states where laws restrict abortion services and local community care options are unavailable. Despite protection offered by the federal Supremacy Clause, providers were concerned that performing abortions or abortion counseling would place them at risk for civil or criminal liability, or disciplinary action by state licensing boards. Leaders also shared concerns regarding the logistics of exercising federal supremacy and the degree of protection provided. Availability of community care

⁵ These issues were more likely to impact care that requires timely access to specialty providers, such as infertility specialists or obstetrician-gynecologists. They were less likely to impact routine reproductive health services that are widely available through generalist providers at VHA facilities, via virtual care modalities such as telehealth, or in the community.

⁶ Within this report, the OIG used the term “established” to refer to reproductive health services that were included in the VA Medical Benefits Package prior to September 9, 2022.

resources and abortion medications (due to pending mifepristone litigation and mailing of abortion medications) also presented challenges for the provision of abortion services.

VHA's Office of Women's Health has a key role in the implementation of the IFR and is working in collaboration with the Office of General Counsel (OGC) and key organizational stakeholders to develop policy and clinical guidance. However, facility leaders frequently expressed the need for continued support. Specifically, leaders discussed the need for

- detailed national guidance to inform the development of local procedures for provision of abortion services to ensure that local procedures are consistent with VHA policy and applicable legal requirements,
- clinical trainings for providers, and
- procedures to follow when clinical processes intersect with state legal restrictions, and administrative supports.

Given the identified challenges for implementation of the IFR, the need for further national guidance and training, and the evolution of the legal landscape related to abortion services across the country, facility leaders will need continuing national and VISN support.

The OIG recognizes the sensitivity of reproductive health services, including pregnancy options counseling and abortion services. This report is a descriptive review and is intended for informational purposes. The OIG did not make recommendations based on this review.

VA Comments and OIG Response

The Under Secretary for Health reviewed the report and did not provide comments (see appendix A). No further action is required.



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Abbreviations

DOJ	US Department of Justice
IFR	interim final rule
IUD	intrauterine device
IVF	in vitro fertilization
OGC	Office of General Counsel
OIG	Office of Inspector General
PBM	Pharmacy Benefits Management Services
VHA	Veterans Health Administration
VISN	Veterans Integrated Service Network
WHISE	Women's Health Innovative and Staffing Enhancement



Introduction

The VA Office of Inspector General (OIG) conducted a national review of Veterans Health Administration's (VHA) reproductive health services for veterans. While VHA provides reproductive health services for men, women, and [gender non-conforming](#) veterans, women continue to be the fastest growing veteran population.¹ Approximately 600,000 women veterans use VHA for health care, half of whom are of childbearing age.² The purpose of the review was to capture a snapshot of the availability of reproductive health across VHA given (1) the rapid demographic change highlighting the need for VHA to ensure ample capacity of reproductive health services, (2) recent court decisions and subsequent changes in state legislation that may affect access to reproductive health services through community care, and (3) the expansion of reproductive health services covered in VA's medical benefits package.³ VHA facility leaders provided the OIG with perspectives related to established and recently implemented reproductive health services.⁴

Background

Reproductive health services, including the availability of accurate medical information, appropriate evaluation, and safe, effective treatments for a range of reproductive health concerns, are important in maintaining a person's overall health and well-being.

Reproductive Health Services in VHA

Reproductive health services are offered through VHA facilities and VHA-paid community care providers to cover a range of healthcare needs across a person's lifespan. Reproductive health care includes [contraception](#) and [preconception care](#), [sexual dysfunction](#) treatment, [infertility](#)

¹ The underlined terms are hyperlinks to a glossary. To return from the glossary, press and hold the "alt" and "left arrow" keys together.

² VHA Women's Health Services, Women's Health Evaluation Initiative, Sourcebook: Women Veterans in the Veterans Health Administration, Volume 4: Longitudinal Trends in Sociodemographics, Utilization, Health Profile, and Geographic Distribution, February 2018. A VHA analysis of veteran population trends from 2018 found that the number of women veterans under age 35 had tripled over the course of sixteen years.

³ VHA, Women Veterans Health Care, "Facts and Statistics: Women Veterans in Focus," June 23, 2023, accessed August 22, 2023, <https://www.womenshealth.va.gov/materials-and-resources/facts-and-statistics.asp>.

⁴ Within this report, the OIG used the term "established" to refer to reproductive health services that were included in the VA Medical Benefits Package prior to September 9, 2022.

evaluation and treatment, [maternity care](#), [pelvic and urinary health care](#), management of [menopause](#), and recently added [pregnancy options counseling](#) and [abortion](#) services.⁵

VHA's Office of Women's Health is responsible for policy development, guidance dissemination, training, and consultation to facilities to provide comprehensive, gender-specific primary care and reproductive health services for women veterans.⁶ Initiatives include the development of a national women's health mini-residency program. This program provides clinical training for VA clinicians, covering core topics in women's health to increase the number of designated women's health providers across VHA.⁷ Additionally, the Women's Health Innovative and Staffing Enhancement (WHISE) initiative provides targeted funding for women's health, including reproductive health services for training, equipment, supplies, and staffing.⁸

VA's Interim Final Rule Related to Reproductive Health Services

On June 24, 2022, the United States Supreme Court in *Dobbs v. Jackson Women's Health Organization (Dobbs)* held that the United States Constitution does not provide a right to abortion and returned the authority to regulate abortion to the states, overruling previous Supreme Court cases *Roe v. Wade (Roe)* and *Planned Parenthood v. Casey (Casey)*.⁹ The Supreme Court's ruling in *Dobbs* provides the states with authority to regulate abortion.¹⁰

In response to *Dobbs*, the Secretary of VA (Secretary) affirmed VA's commitment to provide veterans with "access to gender-specific reproductive health services," recognizing the "rapidly evolving landscape."¹¹ On September 2, 2022, the Secretary announced that once a new interim

⁵ VHA, *Fact Sheet: Veteran Community Care General Information*, September 9, 2019, accessed August 22, 2023, https://www.va.gov/COMMUNITYCARE/docs/pubfiles/factsheets/VHA-FS_MISSION-Act.pdf#. VHA-paid community care is care rendered from a non-VHA provider (community care provider) when a facility is unable to provide the necessary care and services, when a patient cannot safely travel due to medical reasons, when care cannot be provided timely, or when care cannot be provided due to geographic inaccessibility.

⁶ VHA Directive 1330.01(6), *Health Care Services for Women Veterans*, February 15, 2017, amended September 9, 2022. For consistency within this report, VHA's Office of Women's Health Services is referenced as VHA's Office of Women's Health.

⁷ VA, Space Planning Criteria, Chapter 258 Women Veterans Clinical Service (WVCS) (for Models 2 and 3), March 1, 2022. A designated women's health primary care provider is defined as "a primary care provider who is dedicated to and proficient in women's health. A designated [women's health primary care provider] is preferentially assigned women Veterans within their primary care patient panels."

⁸ VHA Assistant Under Secretary for Health for Operations, "Women's Health Innovation and Staff Enhancement 2.1 (WHISE 2.1) Request for Proposals," memorandum to VISN Directors, April 6, 2022. WHISE "provides an opportunity for sites to apply for funding for Women's Health equipment, training, or supplies."

⁹ *Dobbs v. Jackson Women's Health*, 597 U.S. ___; 142 S.Ct. 2228 (2022); *Roe v. Wade*, 410 U.S. 113 (1973); *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992).

¹⁰ *Dobbs*, 597 U.S. at ___; 142 S.Ct. at 2228.

¹¹ VA, Message from the Secretary, *Reproductive Health Services for Veterans*, June 24, 2022.

final rule (IFR) was published, VA would begin to provide access to abortion counseling and, in certain cases, abortion services to pregnant veterans and other VA beneficiaries.¹²

Title 38 of the United States Code provides VA “shall furnish” veterans with “hospital care and medical services. . . which the Secretary determines to be needed.”¹³ Before *Dobbs*, abortions and abortion counseling were excluded from VA’s 1999 medical benefits package.¹⁴ After the *Dobbs* ruling, however, VA determined that such care is “needed” within the meaning of VA’s general treatment authority if an appropriate healthcare professional determines that such care “is needed to promote, preserve, or restore the health of [an] individual and is in accord with generally accepted standards of medical practice.”¹⁵

On September 9, 2022, VA issued an IFR permitting VA to provide pregnant veterans and Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) beneficiaries with access to abortion services “when (1) the life or health of the pregnant veteran would be endangered if the pregnancy were carried to term; or (2) the pregnancy is the result of an act of [rape](#) or [incest](#).”¹⁶ The IFR also amends VA’s medical regulations to allow abortion counseling (pregnancy options counseling) to veterans and CHAMPVA beneficiaries so that

¹² VA, Message from the Secretary, *Reproductive Health*, September 2, 2022.

¹³ *Eligibility for hospital, nursing home, and domiciliary care*, 38 U.S.C. § 1710(a)(1)-(3). The Veterans Health Care Act of 1992, Pub. L. 102-585 does not prohibit VA’s amendment of its medical benefits package in this manner as, when that law was enacted, care was largely linked only to service-connected conditions but did not limit VA’s authority to provide services under any other statutory provision such as 38 U.S.C. §§ 1710 or 1712. Further, in 1996, the Veterans’ Health Care Eligibility Reform Act provided that medical judgment rather than legal criteria establishes when VA provides care and at what level the care is furnished.

¹⁴ 38 C.F.R. § 17.38(c)(1) (Oct. 6, 1999) provided “In addition to the care specifically excluded from the “medical benefits package” under paragraphs (a) and (b) of this section, the “medical benefits package” does not include the following: (1) Abortions and abortion counseling.” VA did not explain the rationale behind the exclusion of abortions and abortion counseling at the time, however, VA was aware that *Roe* had been reaffirmed in relevant part by *Casey* and veterans of reproductive age could access abortion services in their communities.

¹⁵ 38 U.S.C. § 1710(a); 38 C.F.R. § 17.38(b)(1)-(3).

¹⁶ The IFR-Reproductive Health Services, found at 87 F.R. 55287, 38 C.F.R. § 17, Sept. 9, 2022, provides that VA can conduct abortions under certain conditions. VA has statutory authority to determine medical care that is “needed” under its general treatment authority at 38 U.S.C. § 1710(a). The IFR amends the former federal regulation that did not cover abortions and abortion counseling. Specifically, under the IFR at 38 C.F.R. § 17.38(c)(1)(i), abortions are permitted when the life or health of the pregnant veteran would be endangered if the pregnancy is carried to term; and under § 17.38(c)(1)(ii), which permits abortions when the pregnancy is the result of an act of rape or incest. The IFR also allows VA to provide abortions and abortion counseling under the same conditions to certain spouses, children, survivors, and caregivers of veterans who meet specific eligibility criteria; Assistant Under Secretary for Health for Operations Memorandum, *Processing Employee Requests to be Excused from Aspects of the Provision of Reproductive Health Care within the Veterans Health Administration (VHA)*, January 6, 2023. On January 6, 2023, the Assistant Under Secretary for Health for Operations sent a memorandum requiring senior staff to notify employees that, although the VA has the authority to perform abortion counseling and abortions in limited circumstances, employees may request excusal from providing, participating in, or facilitating reproductive health care.

pregnant individuals have the necessary information to make informed decisions about their health care.¹⁷

Scope and Methodology

The OIG initiated this review in September 2022.

To understand the availability of reproductive health services across VHA, the OIG selected 26 VHA facilities representing all Veterans Integrated Service Networks (VISNs), a range of facility complexities, a mix of rural and urban geographical service areas, and varying levels of state restrictions to abortion services. Data mapping showing state restrictions on reproductive health services was used to inform which VHA facilities would be more or less likely to be impacted by state restrictions on reproductive health services following *Dobbs*.¹⁸

To gain VHA leaders' perspectives on provision of reproductive health services in VHA, the OIG interviewed leaders of VHA's Office of Women's Health, Pharmacy Benefits Management (PBM) Services, and National Surgery Office.

In March 2023, approximately six months after VA's enactment of the IFR, the OIG interviewed VHA facility directors, chiefs of staff, women veterans program managers and women's health medical directors, chiefs of primary care, and chiefs of urology or urology representatives (facility leaders) at the selected VHA facilities.¹⁹

This report is a descriptive review of VHA reproductive services and is intended for informational purposes. The OIG did not analyze quantitative data on patients, facilities, or procedures performed within VHA. The report provides perspectives from selected facility leaders on the availability of reproductive health services at the time of the interviews at their respective VHA facilities. The OIG's sampling method was not random and findings cannot be generalized across VHA. In addition, the OIG did not assess or verify the responses provided by VHA and facility leaders for accuracy or completeness.

In the absence of current VA or VHA policy, the OIG considered previous guidance to be in effect until superseded by an updated or recertified directive, handbook, or other policy document on the same or similar issue(s).

Oversight authority to review the programs and operations of VA medical facilities is authorized by the Inspector General (IG) Act of 1978, as amended, 5 U.S.C. §§ 401–424. The OIG reviews

¹⁷ For the purposes of this report, the OIG uses the term “abortion counseling” in correlation with legislation verbiage. The OIG uses the term “pregnancy options counseling” to refer to counseling for a range of pregnancy options available to patients, which includes abortion and maternity healthcare options.

¹⁸ Guttmacher Institute, “Interactive Map: US Abortion Policies and Access after Roe,” accessed July 6, 2023, <https://states.guttmacher.org/policies/abortion-policies>.

¹⁹ For facilities without a chief of urology, the OIG interviewed other relevant leaders or staff with knowledge of urology processes, collectively referred to as “urology representatives.”

available evidence within a specified scope and methodology and makes recommendations to VA leaders, if warranted. Findings and recommendations do not define a standard of care or establish legal liability.

The OIG conducted the review in accordance with *Quality Standards for Inspection and Evaluation* published by the Council of the Inspectors General on Integrity and Efficiency.

Review Results

Challenges with VHA's Provision of Reproductive Health Services

The OIG interviewed VHA program office leaders and VHA facility leaders to determine the availability of reproductive health services. During discussions with these VHA leaders, the OIG also gained insight into the challenges encountered and resources in place to support reproductive health at selected facilities.

The OIG found facilities were generally able to provide reproductive health services, with the most common concerns being systems level challenges that may impact the broader spectrum of healthcare services. These challenges included

- provision of rural health care,
- community care provider availability and coordination, and
- shortages in VHA staffing.

Challenges were rarely reported for established reproductive health services, though some facility leaders mentioned

- limited eligibility criteria and complex community care referral processes for [in vitro fertilization](#) (IVF), and
- availability of specific formulations of erectile dysfunction medication.

Challenges were more frequently reported regarding implementation of pregnancy options counseling and abortion services under the IFR. Facility leaders described

- challenges with IFR implementation,
- concerns regarding potential legal repercussions,
- availability of abortion resources, and
- need for ongoing national guidance and trainings.

Rural Health Care

During interviews, some facility leaders reported that VHA facilities and patients located in rural areas experienced challenges arranging travel to reproductive health appointments for specialty care such as [intrauterine device](#) (IUD) placement, some sexual dysfunction treatments, [semen analysis](#), infertility treatment, pregnancy-related care, and abortion services.

According to VHA's Office of Rural Health, approximately a quarter of all veterans reside in rural geographical locations.²⁰ Rural geographical locations limit health care accessibility based on fewer providers, hospitals, or other types of health delivery options, through VHA and community care resources. VHA community-based outpatient clinics in highly rural areas may not offer face-to-face specialty care.²¹ Therefore, patients in rural areas may need to travel long distances to obtain specialized reproductive health services.²² One facility leader described the locality as highly rural with few community specialists, requiring referrals to be sent to community providers in the closest larger cities. The leader stated that the closest city to the facility is 50 miles away, but if patients travel twice the distance, the options for community care improve.

Community Care Provider Availability and Coordination

Through interviews with facility leaders, the OIG found that facilities utilized community care resources as needed to provide reproductive health services.²³ However, some specialty healthcare services may be lacking or limited in certain facility or patient localities regardless of rural status. Some facility leaders identified a lack of access to community care resources for a range of reproductive health services.

One facility leader described,

as a state, we are very low in terms of sub-specialties and specialties that deal with all of these reproductive issues. And so there can still be delays or barriers in

²⁰ Veterans who live in rural areas may experience challenges with access to basic and preventive health care.

²¹ VA OIG, [Review of Highly Rural Community-Based Outpatient Clinics' Limited Access to Select Specialty Care](#), Report No. 19-00017-191, July 7, 2020.

²² VHA Directive 1695(1), *Veterans Transportation Services*, September 18, 2019, amended November 22, 2022. It is VHA policy that eligible veterans are provided transportation that is consistent with their clinical needs and the availability of related authorized resources. The VA Office of Rural Health has programs to deliver care and support for veterans residing in rural areas, including transportation options to access health care to offset the burden on patients. VA provides travel pay reimbursement for mileage and other travel expenses to eligible veterans and caregivers to and from approved healthcare appointments.

²³ VA Maintaining Internal Systems and Strengthening Integrated Outside Networks (MISSION) Act of 2018, 38 U.S.C. § 1703. The 2018 VA MISSION Act sets requirements for VHA's provision of services through community care providers and community care programs for veterans. When VHA is unable to provide the needed care to patients, the care is provided through community providers. Patients are eligible for community care based on specific eligibility requirements, the needs and circumstances of patients, and the availability of care through VHA.

getting folks to community providers because those community providers just don't exist in our state.

One leader reported that a low number of obstetricians across the large rural area served by the facility made accessing timely care in the community difficult for patients. Some facility leaders noted that a lack of community resources impacts not only VHA but the private sector as well.

VHA Staffing

Some facility leaders reported staffing shortages related to the provision of established reproductive health services. Facility leaders attributed staffing challenges to employee separations coinciding with hiring challenges related to rural locations of facilities and recruitment barriers. As noted within the *OIG Determination of Veterans Health Administration's Severe Occupational Staffing Shortages Fiscal Year 2023* report, VHA facility responses showed a 19 percent increase of staffing shortages throughout VHA from fiscal year 2022.²⁴

Facility leaders reported that staffing shortages increased provider workload and patient wait times. They also reported utilizing community care resources to assist with the provision of reproductive health services. Facility hiring of specialty providers varied among facilities; some facility leaders reported being in the process of hiring specialty providers; while other facility leaders reported challenges recruiting providers in some specialties, such as urology, gynecology, and anesthesiology; and nursing staff.

Eligibility Criteria and Referral Processes for IVF

VHA may provide IVF to eligible patients and their spouse when “clinically appropriate.” According to the medical benefits package, to be eligible, patients must have a service-connected disability that results in the inability to procreate without the use of fertility treatment.²⁵

²⁴ VA OIG, [OIG Determination of Veterans Health Administration's Severe Occupational Staffing Shortages Fiscal Year 2023](#), Report No. 23-00659-186, August 22, 2023. Throughout VHA, 88 percent of facilities reported severe occupational staffing shortages within physician specialties and 92 percent within nurse positions. “After net decreases in reported shortages in [fiscal years] FYs 2019–2021, severe occupational shortages increased by 22 percent in [fiscal year] FY 2022, and another 19 percent in FY 2023.”; VA OIG, [OIG Determination of Veterans Health Administration's Occupational Staffing Shortages Fiscal Year 2022](#), Report No. 22-00722-187, July 7, 2022. Of note, the method in which the OIG collected occupational staffing shortages changed after fiscal year 2020 and could contribute to the increase in staffing shortages reported by VHA.

²⁵ 38 C.F.R. § 17.380, In vitro fertilization treatment, January 19, 2017, amended March 7, 2019; VHA Directive 1334, *In Vitro Fertilization Counseling and Services Available to Certain Eligible Veterans and Their Spouses*, March 12, 2021. To be eligible for IVF under this directive, the following criteria apply: “The Veteran and spouse are a cisgender opposite-sex legally married couple or other legally married couple with opposite-sex gametes/reproductive organs,” and “The female Veteran must have an intact uterus and either be able to make eggs or have had their own eggs (i.e., autologous gametes) cryopreserved; a male Veteran must either be able to make sperm or have had his own sperm (i.e., autologous gametes) cryopreserved.”

In interviews, leaders noted IVF eligibility criteria limitations and described community care referral processes as being complex and time-consuming to navigate. Facility leaders identified several challenges facilitating IVF, including patient eligibility determinations, administrative burdens, lack of community providers within their catchment area, and lack of community providers who accepted VA payment. One facility leader described administrative barriers such as getting patients' spouses enrolled in VA, paperwork burdens on providers with little administrative support, and processes for approval of community care referrals. Some leaders also reported community resources did not accept VA payments for IVF services. Some facility leaders reported addressing the complex process by having IVF consultation teams to determine eligibility of the veteran and coordination of care through the community.

The Director of Reproductive Health within VHA's Office of Women's Health expressed that eligibility is "the biggest pain point for our veterans." The eligibility criteria state that a veteran and their spouse, together, must have sperm, eggs, and a uterus.²⁶ As an example of limited IVF eligibility, VHA's Director of Reproductive Health shared that a veteran who experienced an improvised explosive device (IED) injury to the testes resulting in a lack of sperm would not qualify for IVF services. The Director of Reproductive Health also indicated that, for those who do qualify, geographical areas may lack specialized fertility services such as IVF, and noted that in those cases, VHA may assist with patient travel.

Availability of Erectile Dysfunction Medications

While most facility leaders interviewed did not report barriers for sexual dysfunction treatments, some facility urology leaders or urology representatives identified issues with erectile dysfunction medication availability. Medication availability concerns included the injectable or urethral suppository forms of [alprostadil](#), a medication for erectile dysfunction, being on backorder related to supply chain issues resulting from the COVID-19 pandemic; and compounded injectable medications for erectile dysfunction being unavailable.²⁷

The OIG queried VHA's PBM Services national office to determine whether the medication supply concern was a known national issue and what guidance was sent to facilities regarding navigating the challenge. A PBM leader responded that while there is a national shortage of the suppository form of alprostadil, which is produced by a single manufacturer, the injectable form

²⁶ VHA Directive 1334.

²⁷ VHA Directive 1108.12, *Management and Monitoring of Pharmaceutical Compounded Sterile Preparations*, November 5, 2018. "The process of compounding sterile preparations consists of combining or manipulating commercially available sterile drug products to make a final sterile drug formulation to meet customized patient needs and minimizing the risk of adverse events."

is available from multiple manufacturers.²⁸ Regarding this shortage, the PBM leader also noted that facility providers “can either switch patients to the injectable version or to a therapeutic alternative during the period of the shortage.”

IFR Implementation

VHA’s Office of Women’s Health has a key role in the implementation of the IFR and, according to their Director of Reproductive Health, is working in collaboration with the Office of General Counsel (OGC) and key organizational stakeholders to develop policy and clinical guidance. The Office of Women’s Health’s Director of Reproductive Health told the OIG that a reproductive health team was assembled, with representatives from all VISNs, to provide implementation support and operational guidance to each facility.

At the time of the interviews, approximately six months after the IFR went into effect, facility leaders reported plans to provide pregnancy options counseling and abortion services through a combination of in-house services, inter-facility coordination with other VHA sites, and community resources. Most facility leaders interviewed by the OIG indicated the capability to provide pregnancy options counseling in-house. However, facility leaders reported differing capabilities for provision of [medication abortions](#). Some facility leaders described processes in place to provide medication abortions in-house, while others reported they lacked that capacity and planned to refer patients to community care or collaborate with other VHA facilities where medication abortion services were available. Most of the facility leaders interviewed had plans in place for provision of [abortion procedures](#), with the majority planning to refer abortion procedures to community providers.

While most facility leaders interviewed by the OIG identified plans for providing abortion-related services, a few acknowledged uncertainties regarding resources and plans for providing this care. Those who expressed uncertainty were predominantly from facilities in states with legal restrictions affecting access to abortion services through community providers.

During interviews, facility leaders reported low numbers of patients presenting for pregnancy options counseling or abortion services, with many facilities having none. Although facility leaders expressed having plans in place to provide pregnancy options counseling and abortion services, in many cases, these services had not been utilized, making it too soon to determine the efficacy of the plans in place. One facility leader, in a state with laws restricting community access to abortion services, reported a plan for services to be provided through a facility in

²⁸ As of June 8, 2023, The American Society of Health System Pharmacists showed a drug shortage of alprostadil urethral suppositories starting in July 2022, as well as a prior drug shortage spanning October 2019 through June 2021. A US Food and Drug Administration drug shortage report from August 2022 also documented disruption in availability of injectable alprostadil.

another state, but noted “we haven’t had somebody come who qualifies and meets the criteria and who needs to test the process.”

Potential for Legal Repercussions

Facility leaders discussed legal concerns about the effect of IFR implementation on staff involved in providing abortion-related care in states where laws restrict or criminalize abortion services.

VA healthcare providers can be licensed in any state and are subject to state laws and regulations where licensed.²⁹ Most states “prohibit abortions after a specified point in pregnancy, with some exceptions provided. The allowable circumstances are generally when an abortion is necessary to protect the patient's life or health.”³⁰ Some state laws pose more restrictions on abortions than VHA. For example, 15 states have banned abortion except to preserve the life of the mother and some provide exceptions in the case of rape or incest (but with gestational limits); and 29 states have imposed either gestational or viability limitations.³¹ Unlike VA, several states require that pregnant individuals be given written or verbal counseling, or both, before an abortion. Depending on the state, the counseling may be required to include any of the following examples: the purported link between abortion and breast cancer, the ability of a fetus to feel pain, and mental health consequences for the patient with a description of negative emotional responses.³²

Contrary to some state laws, the IFR allows VHA providers to render abortion services if a determination is made that the life or health of the pregnant veteran would be endangered if the pregnancy were carried to term or when the pregnancy is the result of an act of rape or incest; it does not specify a gestational limit.³³ Further, the IFR does not require that specific counseling information be provided to patients.³⁴

“The [United States] Constitution’s Supremacy Clause generally [immunizes](#) the Federal Government from state laws that directly regulate or discriminate against it,’ unless federal law

²⁹ 38 C.F.R. Part 17, 85 FR 71838, Authority of VA Professionals to Practice Health Care, (Nov. 12, 2020).

³⁰ Guttmacher Institute, *An Overview of Abortion Laws*, June 1, 2023.

³¹ All numbers cited in this section relating to state laws addressing abortion are based on a review conducted as of July 31, 2023.

³² All state laws addressing abortion counseling are based on a review conducted as of August 29, 2023. Some states may have multiple requirements for informed consent.

³³ IFR-Reproductive Health Services, 87 F.R. 55287, 38 C.F.R. § 17.

³⁴ IFR-Reproductive Health Services, 87 F.R. 55287, 38 C.F.R. § 17. The IFR specifies only that “Providing veterans with accurate information about abortions is needed to ensure that they can make informed decisions about their health care.”

authorizes such state regulation.”³⁵ According to the Department of Justice (DOJ), as a federal agency, VA has the ability to [preempt](#) state laws that interfere with, or are contrary to, federal laws allowing VA to provide certain abortion services.³⁶ The DOJ issued a memorandum opinion stating that the IFR is

a lawful exercise of VA’s authority. States may not impose criminal or civil liability on VA employees—including doctors, nurses, and administrative staff—who provide or facilitate abortions or related services in a manner authorized by federal law, including VA’s rule. The Supremacy Clause bars state officials from penalizing VA employees for performing their federal functions, whether through criminal prosecution, license revocation proceedings, or civil litigation.³⁷

In September 2022, the Office of Legal Counsel’s memorandum, *Intergovernmental Immunity for the Department of Veterans Affairs and Its Employees When Providing Certain Abortion Services*, makes clear that states may not penalize VA employees for providing abortion services or counseling as authorized by federal law, which includes the IFR, whether through criminal prosecution, civil litigation, or licensure disciplinary proceedings.³⁸

Despite the constitutional safeguard provided by the Supremacy Clause, the potential exists for state action to be initiated against individual VA employees for following VA policies that

³⁵ *Intergovernmental Immunity for the Department of Veterans Affairs and Its Employees When Providing Certain Abortion Services*, Memorandum Opinion for the Acting General Counsel Department of Veterans Affairs, Slip Opinion, Sept. 21, 2022, citing *United States v. Washington*, 142 S.Ct. 1976 (2022). The memorandum provides that federal law authorizes VA and its employees to provide specified abortion services, and does not clearly and unambiguously authorize states to restrict VA and its employees from providing abortion services. To the contrary, VA’s regulations provide that state laws that interfere with VA healthcare professional’s federal duties are preempted; 38 C.F.R. § 17.419(c) provides that State governments have no legal authority to enforce them in relation to actions by healthcare professionals within the scope of their VA employment.

³⁶ *Intergovernmental Immunity for the Department of Veterans Affairs and Its Employees When Providing Certain Abortion Services*, Memorandum Opinion for the Acting General Counsel Department of Veterans Affairs. (1) When a state law or license, registration, certification, or other requirement prevents or unduly interferes with a healthcare professional's practice within the scope of their VA employment, the healthcare professional is required to abide by their federal duties, which includes, but is not limited to, the following situations: (ii) A healthcare professional may practice their VA healthcare profession within the scope of the VA national standard of practice as determined by VA.

³⁷ *Intergovernmental Immunity for the Department of Veterans Affairs and Its Employees When Providing Certain Abortion Services*, Memorandum Opinion for the Acting General Counsel Department of Veterans Affairs, Slip Opinion.

³⁸ *Intergovernmental Immunity for the Department of Veterans Affairs and Its Employees When Providing Certain Abortion Services*, Memorandum Opinion for the Acting General Counsel Department of Veterans Affairs, Slip Opinion, Sept. 21, 2022.

conflict with state laws.³⁹ In response to such a potential risk, the Deputy Under Secretary for Health issued a memorandum declaring that VA would provide representation before a state licensing board if

- 1) the employee’s conduct was within the scope of employment, and
- 2) the representation would be in the government’s interest.⁴⁰

Additionally, the memorandum reminded staff that “VA employees are protected from personal liability for common law torts, including negligence and malpractice, committed within the scope of their employment. . . upon recommendation of the Torts Law Group of the Office of General Counsel [OGC].”⁴¹

Despite the protections outlined above, several facility leaders were concerned and reported that their providers raised the issue of providing abortion services in states with laws more restrictive than VA. Specifically, providers were concerned that performing abortions or abortion counseling would place them at risk for civil or criminal liability, or disciplinary action by state licensing boards.

Leaders also shared concerns regarding the logistics of exercising federal supremacy and the degree of protection provided if a state government or licensing board chose to act against a VHA provider for the provision of abortion or pregnancy options counseling. A facility leader described perceptions of “a grey zone between the federal mandate and the local state law or [jurisdiction](#).” Another facility leader expressed concern related to adverse state licensure actions, which could affect federal employment and protections.⁴² The facility leader described,

Frankly, people are worried that even though we have the reassurance of federal supremacy, that a state prosecutor or attorney general’s office could pursue a criminal case against a VA provider for providing abortion on VA grounds. . .

³⁹ For example, jurisdictional issues may arise based on the location of VA facilities. “Federal and state governments may exercise different degrees of control over federal property, depending on how the federal government acquired that property and which rights a state retained or received with respect to it. In areas under *exclusive jurisdiction*, only the federal government may enforce laws; the state government lacks the authority to do so. Where federal property is under *concurrent, partial, or proprietorial jurisdiction*, however, a state may be able to enforce its laws to varying degrees.” Congressional Research Service, *Potential Enforcement of State Abortion Laws on Federal Property*, October 24, 2022.

⁴⁰ VA Under Secretary for Health Memorandum: *Representation for VA Health Care Professionals Before State Licensing Boards*, May 26, 2022. The Deputy Under Secretary for Health, performing delegable duties of the Under Secretary for Health, issued the Memorandum. Representation also requires that the conduct be consistent with the VA National Standards of Practice.

⁴¹ VA Under Secretary for Health Memorandum: *Representation for VA Health Care Professionals Before State Licensing Boards*, May 26, 2022.

⁴² VA Handbook 5005/147, Part II, *Staffing*, April 15, 2002, revised September 30, 2021. “An employee who does not maintain an active, current, licensure, registration and/or certification (if required), or who fails to show evidence of such when requested. . . must be separated under appropriate procedures in VA Handbook 5021, Part VI.”

That's introduced. . . a great degree of uncertainty about how real the protection that the DOJ says exists for us versus what would exist in reality. . . While those reassurances. . . do offer some piece of mind, I'm not as sure that it will be as easy as they portray it.

Facility leaders' descriptions of specific concerns related to potential legal repercussions involving federal and state jurisdictional issues showcase the complexity of implementation of the IFR.⁴³

Resource Availability for Abortion Services

Challenges for the provision of abortion services include availability of community care resources and abortion medications (due to pending mifepristone litigation and mailing of abortion medications).

Community Care Abortion Resources

Because abortion laws vary by state, availability of community care resources is also variable. Facility leaders described planning to use community care partners or VHA inter-facility consults as necessary for the provision of abortion services under the IFR.

During the OIG's interviews, facility leaders discussed the lack of availability of abortion services through community care in states where laws restrict these medical practices. They described concerns regarding the absence of local options to provide needed services through community care. A facility leader reported an inability to manage potential abortion-related medical complications and described the impact of state restrictions as "problematic" because there are no states "where abortion is legal anywhere around us. . . [and] no other states within two or three states of us." Facility leaders also referred to the necessity of monitoring the changing landscape within their state as well as surrounding states to determine the availability of community care resources as part of their plans to provide this care.

Some facility leaders reported inter-facility coordination, to include possible transfer of patients between VHA facilities, which allows VHA facilities with capacity to provide pregnancy options counseling and abortion services to support facilities lacking that capacity. The inter-facility coordination allows patients in areas without access to needed services to receive the care at another VHA facility or through telehealth.

⁴³ Congressional Research Service, *Potential Enforcement of State Abortion Laws on Federal Property*. Issues involving state and federal jurisdiction are complex and determining whether VA employees might face criminal prosecution or civil liability for abortions performed in violation of state law depends primarily on three factors: (1) the degree of jurisdiction exercised by the state over federal property; (2) whether the employee concerned is a federal employee acting within the scope of their employment; and (3) whether any federal laws preempt the state law.

A few leaders described how the challenges faced by facilities in states with laws that restrict abortion services had prompted discussions with facilities in states with more access to abortion services to serve as care hubs. One facility leader explained that providers “participating in a national consultation service” through the VISN’s clinical resource hub were able to provide medication abortion services for patients at facilities in states where the service was not available.⁴⁴ Another facility leader stated,

It was determined after much discussion of the political landscape of the [region and VISN], that our site was likely going to become a hub of care for [the VISN]. And so, we've been working closely. . . to try and get things up and running here as quickly as possible to be available for our colleagues in [referenced surrounding states].

As the state laws evolve and case law develops, facility leaders continue to explore options consistent with the IFR to care for patients requiring abortion services.

Abortion Medication

Within the United States, the most commonly used regimen for medication abortions includes the use of the prescription medications, mifepristone and misoprostol.⁴⁵ Presently, two issues involving abortion medications are relevant to veteran and beneficiary care:

- Pending federal appellate litigation involving mifepristone, which could potentially affect VA’s ability to prescribe this common abortion medication.
- The legality of mailing abortion medications.

The United States District Court for the Northern District of Texas issued a ruling in April 2023 that invalidated Food and Drug Administration (FDA) approval of mifepristone by issuing a stay and questioned the adequacy of the FDA approval process.⁴⁶ When the ruling was issued, the United States Supreme Court blocked the district court’s ordered restrictions, pending a decision

⁴⁴ VHA Office of Rural Health, Clinical Resources Hubs, accessed August 3, 2023, https://www.ruralhealth.va.gov/docs/ORH_InfoSheet_Clinical-Resource-Hubs_FINAL_508.pdf. Clinical resource hubs “include a variety of clinical and administrative staff that provide clinical services to identified facilities in each VISN,” increasing access to clinical care for veterans who reside in rural areas. Services may be provided through telehealth technology and in-person visits.

⁴⁵ American College of Obstetricians and Gynecologists, *FAQs: Abortion Care*, FAQ043, updated August 2022, accessed January 4, 2023, <https://www.acog.org/womens-health/faqs/induced-abortion>; Mayo Clinic, “Medical abortion,” July 29, 2022, accessed August 28, 2023, <https://www.mayoclinic.org/tests-procedures/medical-abortion/doctors-departments/pdc-20394688>; US Food and Drug Administration, *Questions and Answers on Mifepristone for Medical Termination of Pregnancy through Ten Weeks Gestation*, January 4, 2023, accessed August 3, 2023, <https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/questions-and-answers-mifepristone-medical-termination-pregnancy-through-ten-weeks-gestation>. Mifepristone and misoprostol are medications commonly prescribed together to end a pregnancy through 10 weeks gestation.

⁴⁶ *Alliance for Hippocratic Medicine v. FDA*, __ F. Supp. 3d __ (N.D. Texas 2023); 2023 WL 2825871 (Court stayed the FDA approval of mifepristone).

by the 5th Circuit Court of Appeals.⁴⁷ On August 16, 2023, the 5th Circuit Court of Appeals issued a decision upholding the district court’s restrictions in part pending review by the Supreme Court. At the time of this review’s publication, a decision by the Supreme Court is pending.⁴⁸

Attorney General Merrick Garland quickly provided an update reinforcing the DOJ’s mission to defend reproductive freedoms, which includes legal advice and litigation defense to healthcare providers. He recognized that the DOJ strongly disagreed with the United States District Court for the Northern District of Texas ruling affecting mifepristone, opining that it would deprive patients “of a safe and effective medication to manage their reproductive health.”⁴⁹

In addition to the uncertain status of prescribing mifepristone, the status of the legality of mailing mifepristone and misoprostol to patients is being challenged.⁵⁰ For example, one facility leader described consulting on a case for a facility in another state where “the drug manufacturer would not send the medication to the state” and noted “we had a very short time frame in terms of the window for medical abortion.” VHA PBM leaders reported that one state had introduced legislation that could present a barrier to the manufacturer shipping abortion medications. According to PBM leaders, VHA facilities in those states must have alternative processes in place for shipping abortion medications to ensure that a patient has timely access when needed.

Mailing abortion medications is presently an accepted practice by VHA and an inability to do so would affect VHA’s ability to provide reproductive health services to veterans and beneficiaries.⁵¹ The Comstock Act of 1873 prohibits the mailing of “every article, instrument, substance, drug, medicine. . . described in a manner calculated to lead another to use or apply it

⁴⁷ *Alliance for Hippocratic Medicine v. FDA*, 2023 WL 2913725 (5th Cir. 2023) (5th Circuit upheld the stay pending appeal on removing mifepristone from the market); *Danco Laboratories v Alliance for Hippocratic Medicine*, 143 S Ct. 1075 (2023) (April 7 Order of the U.S. District Court for the Northern District of Texas is stayed pending appeal in the US Court of Appeals for the 5th Cir. and disposition of a petition for a *writ of certiorari* to the Supreme Court).

⁴⁸ *Alliance for Hippocratic Medicine v. FDA*, 2023 WL 5266026 (5th Cir. 2023) (FDA’s regulations invalid and must be set aside; however, due to Supreme Court April 2023 order, this action is stayed pending final review by the Supreme Court).

⁴⁹ The US Department of Justice News, “Attorney General Merrick B. Garland Delivers Remarks at the Interagency Task Force on Reproductive Healthcare Access,” April 12, 2023, also referenced other pending national litigation affecting reproductive rights and reinforced the Civil Rights Division Attorneys in the DOJ are available for consultation and technical assistance.

⁵⁰ *Alliance for Hippocratic Medicine v. FDA*, 2023 WL 5266026 (5th Cir. 2023) (Court found the FDA’s 2021 mail order decision violated the Comstock Act).

⁵¹ VA Chief Officer, Office of Women’s Health Memorandum, *Prescribing of Abortifacient Medications*, April 10, 2023; Department of Justice Memorandum Opinion for the General Counsel, United States Postal Service, *Application of the Comstock Act to the Mailing of Prescription Drugs That Can Be Used for Abortions*, slip opinion, Dec. 23, 2022.

for producing abortion.”⁵² To address this issue following *Dobbs*, the DOJ issued a memorandum opinion for the General Counsel of the United States Postal Service addressing the legality of mailing mifepristone and misoprostol to patients for the purpose of inducing an abortion.⁵³

The DOJ’s December 2022 memorandum opinion reinforced that VA may rely on federal authority to mail abortion medications, opining that under 18 U.S.C. § 1461, “contrary state law could not constitutionally be applied.”⁵⁴

Need for Guidance and Training Resources

Facility leaders highlighted the need for national guidance to ensure that local procedures are consistent with both VHA policy and legal requirements. Many facility leaders reported receiving support from VHA’s Office of Women’s Health and VISNs, relying on their consultation and guidance during implementation of the IFR. However, facility leaders also expressed the need for additional national guidance to ensure providers and staff are working within their scope of legal protections.⁵⁵ A facility leader reported that the facility “cannot develop [facility] policies until national does because, if our policies should not be strictly in line with national, local providers who are following local policies may not be able to have their actions defended against state attorneys general or against state licensing boards.”

Leaders frequently expressed a need for clinical training, guidance for clinical processes affected by state legal restrictions, and administrative support. The need for policy guidance and funding resources was apparent throughout interviews with leaders. A facility leader stated, “everyone wants to know exactly. . . what they should do, not general terms and options for resources, but exactly what we can and can’t do.” Examples of requested guidance included

- One facility leader reported a need for clinical trainings on “how to approach a patient with. . . first trimester pregnancy concerns or early term pregnancy concerns,” stating “those are hard conversations, depending on what your background is or personal

⁵² Department of Justice Memorandum Opinion for the General Counsel, United States Postal Service, *Application of the Comstock Act to the Mailing of Prescription Drugs That Can Be Used for Abortions*.

⁵³ Department of Justice Memorandum Opinion for the General Counsel, United States Postal Service, *Application of the Comstock Act to the Mailing of Prescription Drugs That Can Be Used for Abortions*. The memorandum states “Section 1461 of title 18 of the U.S. Code does not prohibit the mailing of certain drugs that can be used to perform abortions where the sender lacks the intent that the recipient of the drugs will use them unlawfully.”

⁵⁴ Department of Justice Memorandum Opinion for the General Counsel, United States Postal Service, *Application of the Comstock Act to the Mailing of Prescription Drugs That Can Be Used for Abortions*. This does not take into consideration the legality of prescribing mifepristone, as at the time of publication a final decision was pending by the United States Supreme Court.

⁵⁵ *Intergovernmental Immunity for the Department of Veterans Affairs and Its Employees When Providing Certain Abortion Services*, Memorandum Opinion for the Acting General Counsel Department of Veterans Affairs, Slip Opinion, Sept. 21, 2022; VA Under Secretary for Health Memorandum: *Representation for VA Health Care Professionals Before State Licensing Boards*, May 26, 2022.

thoughts.”⁵⁶ Another facility leader reported, “I was trained on some of this in residency, and I hadn't done any of it. . . since then or since leaving the army, so, it's been about 10 years” and described a need for clinical trainings on current medication protocols for abortion, including “risks, benefits, side effects of the medications, what to watch out for, what to do in case of the complication.”

- A facility leader described a need for guidance on clinical processes affected by state legal restrictions asking, “If the manufacturer of the drug. . . for medical abortion will not, for liability reasons, deliver that medication to. . . [VA facility] because they're in [restricted state] and it is illegal to prescribe in that state, how does a [other VA] provider receive that medication to provide the necessary care?”
- One facility leader noted hoping for more forthcoming national guidance on “the process for those instances where a veteran will have to cross state lines,” describing that because of the “short time window” for the care, “it really will take coordination.”
- Another facility leader reported wanting “more clarity on what funds we could or couldn't use for transportation and support. . . when we start to move people around the VISN or a larger geographic area.”

While acknowledging that the process has taken time and is ongoing, VHA’s Office of Women’s Health Director of Reproductive Health reported that the Office of Women’s Health has worked with OGC to develop further clinical and administrative guidance to support VHA-wide implementation of the IFR.

Despite the need for additional guidance, some facility leaders also offered acknowledgment of the support received from the national program office and VISNs. For example, one facility leader described, “[the national office]. . . respond[s] to our queries. . . right away. . . they kind of guide us through.” Another facility leader stated, “I know that within minutes I can be in touch with my VISN lead. . . I can be in touch with national. . . There's plenty of support.”

The OIG’s interviews with facility leaders identified challenges faced by selected facilities in implementing the IFR. VHA’s Office of Women’s Health continues to develop additional abortion services guidance. Nonetheless, given facility leaders’ requests for further national guidance and training, and the evolving legal landscape, the OIG found facility leaders need ongoing national and VISN support.

⁵⁶ Training on pregnancy options counseling was provided as part of the 2023 “Women’s Health Annual Update” webinar on May 17, 2023. Training materials were subsequently made available to facilities through VHA’s Office of Women’s Health SharePoint site.

Conclusion

The OIG found that the selected facilities were generally able to provide reproductive health services. For the most part, the challenges reported were not unique to the provision of reproductive health and were consistent with recognized broader challenges for health care, including rural areas and travel distances to obtain specialty care, limited community resources including provider shortages, and challenges with VHA staffing and recruitment. These issues were more likely to impact care that requires timely access to specialty providers, such as infertility specialists or obstetrician-gynecologists. They were less likely to impact routine reproductive health services that are widely available through generalist providers at VHA facilities, via virtual care modalities such as telehealth, or in the community.

Challenges were rarely reported for established reproductive health services, though some facility leaders who were interviewed mentioned limited eligibility criteria and complex community care referral processes for IVF. A few noted a disruption in the availability of specific formulations of an erectile dysfunction medication.

Challenges were more frequently reported regarding implementation of pregnancy options counseling and abortion services under the IFR. Most facility leaders interviewed by the OIG reported having plans in place for provision of pregnancy options counseling and abortion services through a combination of in-house resources, inter-facility coordination with other VHA sites, and community care resources. However, a few, predominantly from facilities in states with legal restrictions affecting access to abortion services, acknowledged continuing uncertainties regarding their facilities' resources and plans for providing this care.

At the time of the OIG's interviews, facility leaders reported that patients presenting for covered abortion services were few, and many facilities had not yet encountered the need to provide these services, making it too soon to determine the efficacy of the plans in place.

As abortion-related legislation and court rulings continue to evolve, facilities may need to adjust processes in states with laws limiting abortion services. Several facility leaders expressed concerns regarding potential legal repercussions, including adverse licensure actions, which could negatively impact implementation of the IFR at facilities in states where laws restrict abortion services and local community care options are unavailable.

Leaders discussed the need for detailed national guidance to inform the development of local procedures for provision of covered services and ensure that local procedures are consistent with VHA policy and applicable legal requirements. Facility leaders also identified needs related to clinical trainings for providers, procedures to follow when clinical processes intersect with state legal restrictions, and administrative supports. National guidance and trainings continue to be developed and disseminated to facilities.

Given the identified challenges for implementation of the IFR, the need for further national guidance and training, and the evolution of the legal landscape related to abortion services across the country, facility leaders will need continuing national and VISN support.

The OIG's interviews were used to identify concerns and offer candid perspectives from the facilities. The OIG did not analyze quantitative data on patients, facilities, or procedures performed within VHA, and the sampling method was not random, thus findings cannot be generalized across VHA.

The OIG recognizes the sensitivity of reproductive health services, including pregnancy options counseling and abortion services. This report is a descriptive review and is intended for informational purposes. The OIG did not make recommendations based on this review.

Appendix A: Office of the Under Secretary for Health Memorandum

Department of Veterans Affairs Memorandum

Date: September 22, 2023

From: Under Secretary for Health (10)

Subj: Office of Inspector General (OIG) Draft Report—Review of Veterans Health Administration Reproductive Health Services (VIEWS 10865996)

To: Assistant Inspector General for Healthcare Inspections (54)

1. The Veterans Health Administration (VHA) appreciates OIG's review of VHA reproductive health services and thanks OIG for presenting its findings in this report.
2. Comments regarding the contents of this memorandum may be directed to the GAO OIG Accountability Liaison Office at VHA10BGOALACTION@va.gov.

(Original signed by:)

Shereef Elnahal M.D., MBA

Glossary

abortion. The termination of a pregnancy, involving “the removal of pregnancy tissue, products of conception or the fetus and placenta (afterbirth) from the uterus.”⁵⁷ The recommended method of abortion, medication or procedural, may depend on several factors, including the pregnant individual’s health, stage of the pregnancy, and available care options.⁵⁸

abortion procedures. The removal of pregnancy tissue, or the fetus and placenta, from the uterus using medical instruments.⁵⁹ Vacuum aspiration and dilation and curettage (D&C) procedures are typically used for abortions within the first trimester. Dilation and evacuation (D&E) procedures may be used for abortions within the second trimester.

alprostadil. Medication used to promote erection and is manufactured to be given in either an injectable or urethral suppository route.⁶⁰

contraception. Sometimes referred to as birth control, may be used by individuals to avoid an unintended pregnancy or to lessen the frequency of pregnancies.⁶¹ Those who choose to prevent conception may use various types of contraceptives that include medications, devices, and surgical interventions.⁶²

⁵⁷ Harvard Health Publishing, “Abortion (Termination of Pregnancy),” accessed January 4, 2023, <https://www.health.harvard.edu/medical-tests-and-procedures/abortion-termination-of-pregnancy-a-to-z>. “In general, the terms fetus and placenta are used after eight weeks of pregnancy. Pregnancy tissue and products of conception refer to tissue produced by the union of an egg and sperm before eight weeks.”

⁵⁸ The American College of Obstetricians and Gynecologists, “Abortion Care FAQs,” accessed January 4, 2023, <https://www.acog.org/womens-health/faqs/induced-abortion>.

⁵⁹ The American College of Obstetricians and Gynecologists, “Abortion Care FAQs,” accessed January 4, 2023, <https://www.acog.org/womens-health/faqs/induced-abortion>. In abortion procedures, the cervix is dilated (opened) so that tissue in the uterus can be removed using a suction device and/or medical instruments.

⁶⁰ Access Pharmacy, Drug Monographs, “Alprostadil,” accessed May 9, 2023, <https://accesspharmacy.mhmedical.com/drugs.aspx?gbosID=426444#monoNumber=426444§ionID=241820930&tab=tab0>. (This website is not publicly accessible.); Mayo Clinic, “Erectile dysfunction,” March 29, 2022, accessed January 4, 2023, <https://www.mayoclinic.org/diseases-conditions/erectile-dysfunction/diagnosis-treatment/drc-20355782>.

⁶¹ Merriam-Webster.com Dictionary, “contraception,” accessed September 28, 2022, <https://www.merriam-webster.com/dictionary/contraception>. Deliberate prevention of conception or impregnation; Merriam-Webster.com Dictionary, “birth control,” accessed September 28, 2022, <https://www.merriam-webster.com/dictionary/birth%20control>. Control of the number of children or offspring born especially by preventing or lessening the frequency of conception; VA Women Veterans Health Care, “Birth Control,” accessed September 14, 2022, <https://www.womenshealth.va.gov/WOMENSHEALTH/topics/birth-control.asp>.

⁶² MedlinePlus, “Birth Control,” accessed September 28, 2022, [https://medlineplus.gov/birthcontrol.html#:~:text=Birth%20control%2C%20also%20known%20as,sexually%20transmitted%20diseases%20\(STDs\)](https://medlineplus.gov/birthcontrol.html#:~:text=Birth%20control%2C%20also%20known%20as,sexually%20transmitted%20diseases%20(STDs)).

gender non-conforming. A term that describes people whose gender does not fit into gender binary definitions.⁶³

jurisdiction. “The power, right, or authority to interpret and apply the law.”⁶⁴

immunize. “To provide with protection against or immunity from something.”⁶⁵

incest. “Sexual intercourse between persons so closely related that they are forbidden by law to marry.”⁶⁶

infertility. An inability to achieve pregnancy after one year or longer of having regular, unprotected sexual intercourse. Because fertility declines significantly with age, the timeframe is generally shortened to six months for women who are older than 35.⁶⁷ It is estimated that infertility affects up to 15 percent of couples in the United States.⁶⁸ A number of different factors may cause infertility in the female or male reproductive systems, and in some cases the cause is unknown.⁶⁹

intrauterine device. Long-acting, reversible contraceptive method in which a small T-shaped device is placed inside the uterus by a medical provider.⁷⁰ There are two types of IUDs, hormonal and non-hormonal (copper).

⁶³ VHA Directive 1341(2), *Providing Health Care for Transgender and Intersex Veterans*, May 23, 2018, amended June 26, 2020.

⁶⁴ *Merriam-Webster.com Dictionary*, “jurisdiction,” accessed July 6, 2023, <https://www.merriam-webster.com/dictionary/jurisdiction>.

⁶⁵ *Merriam-Webster.com Dictionary*, “immunize,” accessed June 22, 2023, <https://www.merriam-webster.com/dictionary/immunize>.

⁶⁶ *Merriam-Webster.com Dictionary*, “incest,” accessed on October 18, 2022, <https://www.merriam-webster.com/dictionary/incest>.

⁶⁷ The American College of Obstetricians and Gynecologists, ACOG Committee Opinion Number 781, *Infertility Workup for the Women’s Health Specialist*, vol. 133, No. 6., June 2019.

⁶⁸ The American College of Obstetricians and Gynecologists, ACOG Committee Opinion Number 781, *Infertility Workup for the Women’s Health Specialist*, vol. 133, No. 6., June 2019.

⁶⁹ World Health Organization, “Infertility,” accessed January 3, 2023, <https://www.who.int/news-room/fact-sheets/detail/infertility>. In the female reproductive system, infertility can be caused by “abnormalities of the ovaries, uterus, fallopian tubes, and the endocrine system.” In the male reproductive system, “problems in the ejection of semen, absence or low levels of sperm, or abnormal shape (morphology) and movement (motility) of the sperm” are common causes of infertility. VHA Directive 1332(2), *Fertility Evaluation and treatment*, June 20, 2017, amended May 13, 2020. For male veterans, an “increased incidence of infertility and erectile dysfunction” has been noted, particularly among those with spinal cord injuries and disorders.

⁷⁰ Centers for Disease Control and Prevention (CDC), “Contraception,” November 1, 2022, accessed January 5, 2023, <https://www.cdc.gov/reproductivehealth/contraception/index.htm>. The estimated failure rate of IUDs as a contraceptive method is less than 1 percent.

in vitro fertilization. A complex, multi-step assistive reproductive technology procedure, which involves retrieving oocytes (eggs) from the ovaries, manually combining the oocyte(s) with sperm to achieve fertilization, and placing the fertilized egg (embryo) inside the uterus.⁷¹

maternity care. Encompasses a range of health care services related to pregnancy, delivery, and postpartum.⁷² Pregnancy-related care is primarily provided through community care. VHA facilities may provide maternity-related laboratory tests or medications during pregnancy, as well as health care and services for management of coexisting medical or mental health conditions.

medication abortion. The use of medications to end a pregnancy.⁷³ Medication abortion is safest and most effective during the first trimester of pregnancy.⁷⁴ The FDA approved regimen of mifepristone and misoprostol is approved for use through 10 weeks of pregnancy.⁷⁵ Medication abortion can be started in a medical office or at home with follow-up visits with a healthcare provider.

menopause. “A point in time 12 months after a women’s last [menstrual] period.” The menopausal transition period may occur for years prior to “true menopause” where women experience changes in their menstrual cycles, hot flashes, or other symptoms. “The menopausal transition most often begins between ages 45 and 55. It usually lasts about seven years but can be as long as 14 years.”⁷⁶

pelvic and urinary health care. Services related to treatment of pelvic floor disorders, management of pelvic pain, and urinary incontinence.⁷⁷

preconception care. Preemptive healthcare to protect the health of a future baby.⁷⁸

⁷¹ VHA Directive 1332(2), *Fertility Evaluation and Treatment*, June 20, 2017; Mayo Clinic, “In vitro fertilization (IVF),” September 10, 2021, accessed January 4, 2023, <https://www.mayoclinic.org/tests-procedures/in-vitro-fertilization/about/pac-20384716?p=1>.

⁷² VHA Directive 1330.03, *Maternity Health Care and Coordination*, November 3, 2020.

⁷³ The American College of Obstetricians and Gynecologists, “Abortion Care FAQs,” accessed January 4, 2023, <https://www.acog.org/womens-health/faqs/induced-abortion>.

⁷⁴ Mayo Clinic, “Medical Abortion,” July 29, 2022, accessed January 4, 2023, <https://www.mayoclinic.org/tests-procedures/medical-abortion/about/pac-20394687>.

⁷⁵ US Food and Drug Administration, “Questions and Answers on Mifepristone for Medical Termination of Pregnancy Through Ten Weeks Gestation,” accessed August 3, 2023, <https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/questions-and-answers-mifepristone-medical-termination-pregnancy-through-ten-weeks-gestation>.

⁷⁶ National Institute on Aging, “What is Menopause?” accessed July 31, 2023, <https://www.nia.nih.gov/health/what-menopause>.

⁷⁷ VHA, Women Veterans Health Care, “Chronic Pelvic Pain,” January 31, 2023, accessed August 24, 2023, <https://www.womenshealth.va.gov/WOMENSHEALTH/topics/chronic-pelvic-pain.asp>; VHA, Women Veterans Health Care, “Urinary Incontinence,” March 31, 2023, accessed August 24, 2023, <https://www.womenshealth.va.gov/WOMENSHEALTH/topics/urinary-incontinence.asp>.

⁷⁸ Centers for Disease Control and Prevention (CDC), “Before Pregnancy,” accessed July 7, 2023, <https://www.cdc.gov/preconception/index.html>.

preempt. “To replace or supersede (a law).”⁷⁹

pregnancy options counseling. The provision of support and accurate information for a person who is making a decision about a pregnancy, including choices to continue the pregnancy and become a parent, continue the pregnancy and place the child with another person or family for adoption, or end the pregnancy with abortion.⁸⁰ Pregnancy options counseling is neutral and non-directive, providing information about all options to help the pregnant individual consider what factors are personally important in making a decision about a pregnancy.⁸¹

rape. An unlawful sexual activity carried out forcibly or under threat of injury against a person's will or with a person who is beneath a certain age or incapable of valid consent.⁸²

semen analysis. Evaluation of the volume and quality of a man’s sperm. The process involves collecting a semen sample and evaluating the sample in a laboratory. Semen analysis is a part of the evaluation to diagnose male infertility. Semen analysis is also used to determine whether a vasectomy was successful.⁸³

sexual dysfunction. Sexual health is defined broadly as “a state of physical, emotional, mental and social well-being in relation to sexuality,” and not solely as the absence of disease or dysfunction.⁸⁴ Sexual dysfunction in males includes erectile dysfunction, decrease in interest or desire, ejaculatory disorders, and pain with intercourse. Sexual dysfunction in females encompasses decreased interest or desire, difficulty with arousal or orgasm, and pain.⁸⁵ Recommended treatments depend on the type and cause of dysfunction, and may include medication, mechanical aids, behavioral treatments, or psychotherapy.⁸⁶

⁷⁹ Merriam-Webster.com Dictionary, “preempt,” accessed June 22, 2023. <https://www.merriam-webster.com/dictionary/preempt>.

⁸⁰ US Department of Health and Human Services, Office of Population Affairs, Reproductive Health National Training Center, *Exploring All Options: Pregnancy Counseling Without Bias*, August 2016, accessed August 24, 2023, https://rhntc.org/sites/default/files/resources/2017-10/fpntc_expl_all_options2016.pdf.

⁸¹ Reproductive Health National Training Center, “Exploring All Options: Pregnancy Counseling Without Bias,” accessed June 12, 2023, https://rhntc.org/sites/default/files/resources/2017-10/fpntc_expl_all_options2016.pdf.

⁸² Merriam-Webster.com Dictionary, “rape,” accessed October 18, 2022, <https://www.merriam-webster.com/dictionary/rape>.

⁸³ Cleveland Clinic, “Semen Analysis,” accessed March 27, 2023, <https://my.clevelandclinic.org/health/diagnostics/21520-semen-analysis>.

⁸⁴ World Health Organization, “Sexual and Reproductive Health and Research (SRH),” accessed January 30, 2023, <https://www.who.int/teams/sexual-and-reproductive-health-and-research/key-areas-of-work/sexual-health/defining-sexual-health#:~:text=Sexual%20health.%20According%20to%20the%20current%20working%20definition%2C.merely%20the%20absence%20of%20disease%2C%20dysfunction%20or%20infirmity>.

⁸⁵ Cleveland Clinic, “Sexual Dysfunction” accessed June 27, 2023, <https://my.clevelandclinic.org/health/diseases/9121-sexual-dysfunction>.

⁸⁶ Cleveland Clinic, “Sexual Dysfunction,” accessed June 27, 2023, <https://my.clevelandclinic.org/health/diseases/9121-sexual-dysfunction>.

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